

Act No. 394

Public Acts of 2008

Approved by the Governor

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STATE OF MICHIGAN

94TH LEGISLATURE

REGULAR SESSION OF 2008

Introduced by Senators Garcia, Birkholz, Richardville, Pappageorge, Kahn, Gilbert, Brown, Gleason and Jansen

ENROLLED SENATE BILL No. 897

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 11514 (MCL 324.11514), as amended by 2007 PA212, and by adding part 173.

The People of the State of Michigan enact:

Sec. 11514. (1) Optimizing recycling opportunities, including electronics recycling opportunities, and the reuse of materials shall be a principal objective of the state's solid waste management plan. Recycling and reuse of materials, including the reuse of materials from electronic devices, are in the best interest of promoting the public health and welfare. The state shall develop policies and practices that promote recycling and reuse of materials and, to the extent practical, minimize the use of landfilling as a method for disposal of its waste. Policies and practices that promote recycling and reuse of materials, including materials from electronic devices, will conserve raw materials, conserve landfill space, and avoid the contamination of soil and groundwater from heavy metals and other pollutants.

(2) A person shall not knowingly deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, knowingly permit disposal in the landfill of, any of the following:

(a) Medical waste, unless that medical waste has been decontaminated or is not required to be decontaminated but is packaged in the manner required under part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13831.

(b) More than a de minimis amount of open, empty, or otherwise used beverage containers.

(c) More than a de minimis number of whole motor vehicle tires.

(d) More than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i).

(3) A person shall not deliver to a landfill for disposal, or, if the person is an owner or operator of a landfill, permit disposal in the landfill of, any of the following:

(a) Used oil as defined in section 16701.

(b) A lead acid battery as defined in section 17101.

(c) Low-level radioactive waste as defined in section 2 of the low-level radioactive waste authority act, 1987 PA 204, MCL 333.26202.

(d) Regulated hazardous waste as defined in R299.4104 of the Michigan administrative code.

(e) Bulk or noncontainerized liquid waste or waste that contains free liquids, unless the waste is 1 of the following:

(i) Household waste other than septage waste.

(ii) Leachate or gas condensate that is approved for recirculation.

(iii) Septage waste or other liquids approved for beneficial addition under section 11511b.

(f) Sewage.

(g) PCBs as defined in 40 CFR 761.3.

(h) Asbestos waste, unless the landfill complies with 40 CFR 61.154.

(4) A person shall not knowingly deliver to a municipal solid waste incinerator for disposal, or, if the person is an owner or operator of a municipal solid waste incinerator, knowingly permit disposal in the incinerator of, more than a de minimis amount of yard clippings, unless they are diseased, infested, or composed of invasive species as authorized by section 11521(1)(i). The department shall post, and a solid waste hauler that disposes of solid waste in a municipal solid waste incinerator shall provide its customers with, notice of the prohibitions of this subsection in the same manner as provided in section 11527a.

(5) If the department determines that a safe, sanitary, and feasible alternative does not exist for the disposal in a landfill or municipal solid waste incinerator of any items described in subsection (2) or (4), respectively, the department shall submit a report setting forth that determination and the basis for the determination to the standing committees of the senate and house of representatives with primary responsibility for solid waste issues.

PART 173 ELECTRONICS

Sec. 17301. As used in this part:

(a) "Collector" means a person who receives covered electronic devices from consumers and arranges for the delivery of the covered electronic devices to a recycler.

(b) "Computer" means a desktop personal computer or laptop computer, a computer monitor, or beginning April 1, 2011, a printer. Computer does not include any of the following:

(i) A personal digital assistant device or mobile telephone.

(ii) A computer peripheral device, including a mouse or other similar pointing device, or a detachable or wireless keyboard.

(c) "Computer takeback program" means a program required under section 17305(c).

(d) "Consumer" means a person who used a covered electronic device primarily for personal or small business purposes in this state.

(e) "Covered computer" means a computer that was or will be used primarily for personal or small business purposes in this state. Covered computer does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(f) "Covered electronic device" means a covered computer or covered video display device.

(g) "Covered video display device" means a video display device that was or will be used primarily for personal or small business purposes in this state. Covered video display device does not include a device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for transportation or use in an industrial, governmental, commercial, research and development, or medical setting, including, but not limited to, diagnostic, monitoring, or control products, medical products approved under the federal food, drug, and cosmetic act, 21 USC 301 to 399, equipment used for security, sensing, monitoring, antiterrorism, or emergency services purposes, or equipment designed and intended primarily for use by professional users.

(h) "Department" means the department of environmental quality.

(i) "Electronic device takeback program" or "takeback program" means a computer takeback program or a video display device takeback program.

(j) "Manufacturer", subject to subdivision (k), means any of the following:

(i) The person who owns the brand with which a covered computer is labeled.

(ii) The person who owns or is licensed to use the brand with which a covered video display device is labeled.

(iii) If the brand owner does not do business in the United States, the person on whose account a covered electronic device was imported into the United States.

(iv) A person who contractually assumes the responsibilities and obligations of a person described under subparagraph (i), (ii), or (iii).

(k) Manufacturer does not include a person unless the person manufactured, sold, or imported more than 50 covered computers in 2000 or any subsequent calendar year or more than 50 covered video display devices in the previous calendar year.

(l) "Printer" means a printer or a multifunction or "all-in-one" device that in addition to printing performs 1 or more other operations such as copying, scanning, or faxing, that is designed to be placed on a desk or other work surface, and that may use any of various print technologies, such as laser and LED (electrographic), ink jet, dot matrix, thermal, or digital sublimation. Printer does not include a floor-standing printer, a printer with an optional floor stand, a point of sale (POS) receipt printer, a household printer such as a calculator with printing capabilities or a label maker, or a non-stand-alone printer that is embedded into a product other than a covered computer.

(m) "Recycler" means a person who as a principal component of business operations acquires covered electronic devices and

sorts and processes the covered electronic devices to facilitate recycling or resource recovery techniques. Recycler does not include a collector, hauler, or electronics shop.

(n) "Retailer" means a person that sells a covered electronic device to a consumer by any means, including transactions conducted through sales outlets, catalogs, mail order, or the internet, whether or not the person has a physical presence in this state.

(o) "Small business" means a business with 10 or fewer employees.

(p) "Video display device" means an electronic device with a viewable screen of 4 inches or larger that contains a tuner that locks on to a selected carrier frequency and is capable of receiving and displaying television or video programming via broadcast, cable, or satellite. Video display device includes, but is not limited to, a direct view or projection television whose display technology is based on cathode ray tube (CRT), plasma, liquid crystal (LCD), digital light processing (DLP), liquid crystal on silicon (LCOS), silicon crystal reflective display (SXRD), light emitting diode (LED), or similar technology.

(q) "Video display device takeback program" means a program required under section 17305(d).

Sec. 17303. (1) By 30 days after the end of each state fiscal year, a manufacturer that sells or offers for sale to any person in this state a new covered electronic device shall register with the department on a form provided by the department. The registration expires 30 days after the end of the following state fiscal year. After October 30, 2009, a manufacturer who has not already filed a registration under this part shall submit a registration within 10 business days after the manufacturer begins to sell or offer for sale new covered electronic devices in this state.

(2) A registration under subsection (1) shall include all of the following:

(a) The manufacturer's name, address, and telephone number.

(b) Each brand name under which the manufacturer sells or offers for sale covered electronic devices in this state.

(c) Information about the manufacturer's electronic device takeback program, including all of the following:

(i) Information provided to consumers on how and where to return covered electronic devices labeled with the manufacturer's name or brand label.

(ii) The means by which information described in subparagraph (i) is disseminated to consumers, including the relevant website address if the internet is used.

(iii) Beginning with the first registration submitted after the implementation of the takeback program, a report on the implementation of the takeback program during the prior state fiscal year, including all of the following:

(A) The total weight of the covered electronic devices received by the takeback program from consumers during the prior year.

(B) The processes and methods used to recycle or reuse the covered electronic devices received from consumers.

(C) The identity of any collector or recycler with whom the manufacturer contracts for the collection or recycling of covered electronic devices received from consumers. The identity of a recycler shall include the addresses of that recycler's recycling facilities in this state, if any. The identity of a collector or recycler reported under this subparagraph is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(3) A registration is effective upon receipt by the department if the registration is administratively complete.

(4) If a manufacturer's registration does not meet the requirements of this section and any rules promulgated under this part, the department shall notify the manufacturer of the deficiency. If the manufacturer fails to correct the deficiency within 60 days after notice is sent by the department, the department may deny or revoke the manufacturer's registration, after providing an opportunity for a contested case hearing under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A registration is valid until October 30 of each year. A manufacturer of covered electronic devices shall update its registration within 10 business days after a change in the brands of covered electronic devices from that manufacturer sold or offered for sale in this state.

(6) Until October 1, 2015, a manufacturer's registration shall be accompanied by an annual fee of \$3,000.00. However, if the amount of money in the fund on December 31 of any year is greater than \$600,000.00, the department shall not collect manufacturers' registration fees for the following state fiscal year.

(7) Revenue from manufacturers' registration fees collected under this section shall be deposited in the electronic waste recycling fund created in section 17327.

(8) The department shall maintain on its website a list of registered manufacturers of computers and a list of registered manufacturers of video display devices and the website addresses at which they provide information on recycling covered electronic devices.

(9) Not later than October 1, 2011 and every 2 years after that date, the department shall submit a report to the secretary of the senate and to the clerk of the house of representatives that assesses the adequacy of the fees under this section and any departmental recommendation to modify those fees.

Sec. 17305. Beginning April 1, 2010, a manufacturer shall not sell or offer for sale to any person in this state a new covered electronic device, whether through sales outlets, catalogs, mail order, the internet, or any other means, unless all of the following requirements are met:

- (a) The covered electronic device is labeled with the manufacturer's name or brand label, owned by or, in the case of a video display device, licensed for use by the manufacturer.
- (b) The manufacturer's name appears on the applicable registration list maintained by the department under section 17303.
- (c) If the covered electronic device is a covered computer, the manufacturer has a computer takeback program as described in section 17309.
- (d) If the covered electronic device is a covered video display device, the manufacturer has a video display device takeback program as described in section 17311.

Sec. 17307. A retailer shall not sell or offer for sale to any person in this state a new covered electronic device from a manufacturer, purchased by the retailer on or after April 1, 2010 unless the manufacturer appears on the applicable registration list under section 17303.

Sec. 17309. (1) Beginning April 1, 2010, each manufacturer of covered computers shall implement a computer takeback program that meets all of the following criteria:

- (a) The manufacturer of a covered computer that has reached the end of its useful life for the consumer or the manufacturer's designee accepts from the consumer the covered computer. This part shall not be construed to impair the obligation of a contract under which a person agrees to conduct a computer takeback program on behalf of a manufacturer.
- (b) A consumer is not required to pay a separate fee when the consumer returns the covered computer to the manufacturer of that covered computer or the manufacturer's designee.

(c) The collection of covered computers is reasonably convenient and available to and otherwise designed to meet the needs of consumers in this state. Examples of collection methods that alone or combined meet the convenience requirements of this subdivision include systems for a consumer to return a covered computer by 1 or more of the following means:

(i) Mail or common carrier shipper.

(ii) Deposit at a local physical collection site that is kept open and staffed on a continuing basis.

(iii) Deposit during periodic local collection events.

(iv) Deposit with a retailer.

(d) The manufacturer of a covered computer provides a consumer information on how and where to return the covered computer, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered computers when the covered computers are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered computers collected under subdivision (a).

(2) A manufacturer's computer takeback program is not required to accept more than 7 covered computers from a single consumer on a single day.

(3) A manufacturer may conduct a computer takeback program alone or in conjunction with other manufacturers. A manufacturer may arrange for the collection and recycling of covered computers by another person to fulfill the manufacturer's obligations under this section.

Sec. 17311. (1) Beginning April 1, 2010, each manufacturer of covered video display devices shall implement a video display device takeback program that meets all of the following criteria:

(a) A manufacturer or the manufacturer's designee accepts from a consumer any covered video display device that has reached the end of its useful life for the consumer, regardless of the type or brand of covered video display device.

(b) A consumer is not required to pay a separate fee when the consumer returns a covered video display device through the takeback program of any manufacturer of any covered video display device.

(c) The requirements of section 17309(1)(c), as applied to covered video display devices.

(d) The manufacturer provides a consumer information on how and where to return a covered video display device, including, but not limited to, collection, recycling, and reuse information on the manufacturer's publicly available website. The manufacturer may also include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's covered video display devices when the covered video display devices are sold or provide that information via a toll-free telephone number.

(e) The manufacturer recycles or arranges for the recycling of any covered video display device collected under subdivision (a). As a nonbinding target, each manufacturer required to conduct a video display device takeback program should annually recycle 60% of the total weight of covered video display devices sold by the manufacturer in this state during the prior state fiscal year. Sales data under this subdivision are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed by the department unless required by court order.

(2) A manufacturer's video display device takeback program is not required to accept more than 7 covered video display devices from a single consumer on a single day.

(3) A manufacturer may conduct a video display device takeback program alone or in conjunction with other manufacturers.

A manufacturer may arrange for the collection and recycling of covered video display devices by another person to fulfill the manufacturer's obligations under this section.

Sec. 17313. (1) The electronic waste advisory council is created within the legislative branch of state government. The council shall consist of the following members:

(a) Four individuals appointed by the senate majority leader as follows:

(i) One individual representing covered video display device manufacturers.

(ii) One individual representing recyclers of covered computers or covered video display devices.

(iii) One individual representing a trade association of computer manufacturers and video display device manufacturers.

(iv) One individual who is a member of the senate.

(b) Four individuals appointed by the speaker of the house of representatives as follows:

(i) One individual representing covered computer manufacturers.

(ii) One individual representing retailers of covered computers or covered video display devices.

(iii) One individual representing an agency responsible for a countywide recycling program.

(iv) One individual who is a member of the house of representatives.

(c) Two individuals appointed by the governor as follows:

(i) One individual representing a statewide conservation organization.

(ii) One individual representing the department.

(2) The appointments to the council under subsection (1) shall be made not later than 30 days after the effective date of the amendatory act that added this section.

(3) A member of the council shall serve for the life of the council. If a vacancy occurs on the council, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. The appointing official may remove a member of the council for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

(4) The council member who is a member of the senate and the council member who is a member of the house of representatives shall serve as co-chairs of the council. The first meeting of the council shall be called by the co-chairs. At the first meeting, the council shall elect from among its members any other officers that it considers necessary or appropriate. After the first meeting, the council shall meet at least quarterly, or more frequently at the call of a co-chair or if requested by 2 or more members.

(5) A majority of the members of the council constitute a quorum for the transaction of business at a meeting of the council. A majority of the members present and serving are required for official action of the council.

(6) The business that the council may perform shall be conducted at a public meeting of the council held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in the possession of, or retained by the council in the performance of an official function is subject to the freedom of information act, 1976 PA 442,

MCL 15.231 to 15.246.

(7) Members of the council shall serve without compensation. However, the member of the council representing the department shall serve without additional compensation.

(8) By April 1, 2012, the council shall submit a report to the governor, the department, and the standing committees of the legislature with jurisdiction over issues primarily pertaining to natural resources and the environment. The report shall evaluate the program under this part and make recommendations to improve the recycling of covered electronic devices. The report shall evaluate all of the following in light of the policies and objectives set forth in section 17314:

- (a) Whether a manufacturer's market share should be used to determine the amount of video display devices required to be recycled annually by the manufacturer.
- (b) Whether a manufacturer with a takeback program that recycles electronic waste at a higher rate than provided for in this part should be granted credits and, if so, the life of the credits, whether the credits would be transferable, and how the credit system should otherwise operate.
- (c) Whether the nonbinding target for manufacturers recycling covered video display devices under section 17311 should be increased or decreased and whether the target should be made mandatory.
- (d) What items should be included in a mandatory takeback program and, if new items are recommended, what the recycling rates should be for those new items.
- (e) Whether and how a manufacturer should be sanctioned for failing to meet the requirements of this part.
- (f) Whether funding for the administration of this part is appropriate or needs to be increased or decreased.
- (g) Whether a program should be developed to recognize manufacturers that implement an expanded recycling program for additional products such as printers or recycles electronic waste at a higher rate than provided for in this part.
- (h) Whether a system should be developed to collect covered electronic devices that are otherwise not collected by a manufacturer.
- (i) Whether additional recycling data, such as the amount of covered electronic devices collected by collectors, should be collected and, if so, how.
- (j) Whether a program should be developed and funding should be obtained for grants to expand recycling and recovery programs for covered electronic devices and to provide consumer education related to the programs.
- (k) Whether a disposal ban for covered electronic devices is appropriate.

(9) The council is dissolved effective July 1, 2012.

Sec. 17327. (1) The electronic waste recycling fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department of environmental quality shall be the administrator of the fund for auditing purposes.

(5) Money from the fund shall be expended, upon appropriation, for the administrative expenses of the department in implementing this part.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 94th Legislature are enacted into law:

- (a) Senate Bill No. 898.
- (b) House Bill No. 6714.
- (c) House Bill No. 6715.

This act is ordered to take immediate effect.

Secretary of the Senate

Clerk of the House of Representatives

Approved

Governor